

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DIEDRA SIMPSON,	:	CASE NO. 3:20-cv-65
Plaintiff,	:	JUDGE WALTER H. RICE
v.	:	
JOHN TOKARZ, et al.,	:	
Defendants.	:	
CALEB UPTON	:	CASE NO. 3:20-cv-71
Plaintiff,	:	JUDGE WALTER H. RICE
v.	:	
UNITED STATES DEPARTMENT OF THE AIR FORCE,	:	
Defendant.	:	
KATRICE MARSHALL	:	CASE NO. 3:20-cv-72
Plaintiff,	:	JUDGE WALTER H. RICE
v.	:	
UNITED STATES DEPARTMENT OF THE AIR FORCE	:	
Defendant.	:	

DECISION AND ENTRY ON SECOND *IN CAMERA* REVIEW OF MEDICAL
RECORDS FINDING NO INFORMATION THAT DEFENDANT TOKARZ
WAS WORKING AT THE TIME OF THE NOVEMBER 27, 2017, ACCIDENT;
PLAINTIFFS IN CASE NOS. 3:20-CV-65, 3:20-CV-71 AND 3:20-CV-72
ORDERED TO SHOW CAUSE ON OR BEFORE APRIL 26, 2021, WHY
CASES SHOULD NOT BE DISMISSED WITH PREJUDICE

Before the Court is a Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim filed by Defendants, the United States of America and the United States Department of the Air Force, Doc. #13. No response to this motion has been filed by Plaintiffs, pending the results of the Court's *in camera* review of the medical records of Defendant John Tokarz for treatment received by him on the day of the accident, November 27, 2017. The *in camera* review of said records was agreed to by all parties on September 11, 2020, during a conference call with the Court. The review was for the limited purpose of determining whether there was any information in the records to indicate that Defendant Tokarz, an employee at Wright Patterson Air Force Base, was working at the time of the accident. Counsel for Plaintiffs told the Court that Defendant had been deposed and testified that he was not working at the time of the accident.

Plaintiffs' counsel further advised the Court that, assuming the Court's review of the medical records was consistent with Defendant Tokarz's sworn deposition testimony, a Stipulation of Dismissal without prejudice would be filed.

Following the September 11, 2020, conference with the Court, John Garvey, attorney for Defendant Tokarz, provided the Court with Defendant Tokarz's medical records for November 27, 2017, from Beaver Creek Township Fire Department, the City of Bellbrook Fire Department and Soin Medical Center. During a scheduled conference call on November 30, 2020, the Court advised all counsel that the three sets of medical records were reviewed by the Court and

that there was no information in them to indicate that Defendant Tokarz was working at the time of the accident.

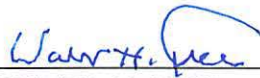
At the request of attorney Darryl Segars, counsel for Plaintiff Diedra Simpson, the Court agreed to review Defendant Tokarz's medical records for a second time. This time, however, the medical records from Beaver Creek Township Fire Department, the City of Bellbrook Fire Department and Soin Medical Center would be subpoenaed and sent directly to the Court. Thereafter, subpoenas were issued by attorney Segars to these entities, Doc. ##20, 21 and 22. The Court received the medical records from the Beaver Creek Township Fire Department, Doc. #20, and the City of Bellbrook Fire Department, Doc. #21. However, because no records were received from Soin Medical Center, the Court issued its own subpoena to Kettering Health Network, Doc. #23. The records for Defendant Tokarz from Soin Medical Center have now been received.

The Court has reviewed all subpoenaed medical records of Defendant Tokarz and, consistent with its earlier review of medical records received from attorney Garvey, finds no information in these records to indicate that Defendant Tokarz was working at the time of the November 27, 2017, accident.

Based on the above, including the representation by Plaintiffs' counsel that, assuming the medical records of Defendant Tokarz from November 27, 2017, did not show that he was working at the time of the accident, the cases would be dismissed without prejudice, Plaintiffs' Counsel are ordered to show cause by April 26, 2021, as to why Case Nos. 3:20-cv-65, 3:20-cv-71 and 3:20-cv-72 should

not be dismissed, with prejudice, for lack of subject matter jurisdiction and/or for failure to state a claim.

Date: April 9, 2021



WALTER H. RICE
UNITED STATES DISTRICT JUDGE